

The Topeka State Journal.

LAST EDITION.

MONDAY EVENING.

TOPEKA, KANSAS, APRIL 29, 1901.

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TWO CENTS.

THE TRAIN IN WHICH THE PRESIDENT AND CABINET STARTED THIS MORNING PROMPTLY AT 10:30 O'CLOCK ON THEIR EXTENDED TRIP TO THE PACIFIC COAST, COVERING 10,500 MILES.

MR. PARKER WINS

Judge Hazen Holds He Should Have Certificate.

Certified Returns of Judges Should Be Taken.

BOARD TO RECONVENE.

Person Shown to Be Elected Must Be Given Certificate.

Tallies Should Not Have Been Considered by Council.

INJUNCTION IS DENIED.

The Ban Upon City Appointments is Removed.

Motion For New Trial at Once Made.

"It seems clear that the courts would hold that the tally sheets found with the returns in a city election should not be considered as a part of the returns. The certificates of the judges from the two precincts in question are in substantial compliance with the returns required to be made to the commissioner of elections and the board of supervisors. It follows that the canvassing board should canvass the returns of those two precincts in accordance with the certificates of the judges and ignore the tally sheets.

"The peremptory writ of mandamus will be allowed and the city council required to canvass the vote from the first precinct of the Second ward and the third precinct of the Third ward according to the certificates of the judges of the election from those precincts and to ignore the tally sheets found therein, and to declare the person elected mayor of the city of Topeka who has received the highest number of votes according to such canvass." From the opinion of Judge Hazen in the Parker-Hughes mandamus case.

Judge Hazen this morning decided the mandamus case brought by the attorneys for Albert Parker against J. W. F. Hughes in favor of Mr. Parker. The temporary injunction asked for to prevent Hughes from making appointments was denied and the restraining order in force up to today was set aside. The next regular meeting of the city council will be next Monday night and at that time the council is ordered, virtually, to issue a certificate of election to Albert Parker.

The attorneys for Judge Hughes made a motion for a new trial and asked for judgment on the findings. The attorneys will be heard at 4:30 o'clock today. Judge Hazen announced that the new members of the council would be made parties to the suit and that the writ of mandamus will issue against them. Judge Hazen refused to make ex-Mayor Drew a party to the suit as he said Mayor Drew had complied with the duties involved upon him and that the court could not order him to do anything when he had performed his duties regarding the canvass.

Judge Hazen's conclusions of law, as found in the finding of facts by the court, are in brief as follows: "That the board of canvassers were not authorized to use the tally sheets in making the canvass complained of but should have accepted the summary statements signed and certified by the judges of the two precincts in question as the returns from said precincts."

"That the plaintiff is entitled to a peremptory writ of mandamus to compel the defendant to canvass the returns according to the certified statements of the judges."

Judge Hazen's opinion in the Parker-Hughes mandamus case is exhaustive. In summing up the decision the court decides that a mandamus proceeding is a proper proceeding to bring and that the court can order the council sitting as a canvassing board to do certain things. The court held that when the canvassing board had made a wrong canvass and had issued an illegal certificate of election that the court could order the board to reconvene and issue another certificate to another party and that the party receiving that certificate from the canvassing board has the right to enter upon the duties of the office.

The court holds that the canvassing board in taking the tallies instead of the returns of the judges adopted the wrong method in determining which candidate for mayor received the highest number of votes. The court cited the fact that there are provisions of the general election law which apply to cities not having a commissioner of elections and that there are other provisions applying to cities having an election commissioner. Judge Hazen held that the city elections are held under the commissioner of elections law and that that law makes the returns of the judges the official returns and that the tallies are no part of the returns.

The court held that the opinion of Justice Johnson in the Rice versus the board of canvassers of Coffey county case which has been referred to by the attorneys of Col. Hughes, is not a parallel case to this as it was governed by the general election law.

The reading of the opinion by Judge Hazen occupied over 20 minutes. The court room was crowded. The space inside the railing was taken up

HALL IS ARRESTED

Policeman Who Killed George Head in Jail.

Sheriff Detains the Officer Without a Warrant.

WAIT FOR MRS. HEAD.

Will Swear to One When She Returns.

Meanwhile Hall Occupies a Cell in County Jail.

The Coroner's Inquest Is Completed Today.

Policeman S. M. Hall was arrested at noon today by Under Sheriff Williams for killing George W. Head by striking him with his club. Hall was at once locked up in the county jail. No warrant will be issued for Hall until Mrs. Head returns from Sabathia, where the funeral of Mr. Head will be held.

It is plain from the evidence brought out before the coroner's jury that Hall was not justified in striking Head. Head was an old man, who was feeble, and he could have made but slight resistance if he had tried. He had no weapon of any kind, so Hall had no reason to fear bodily violence. The offense for which the arrest was made was trivial.

CORONER'S INQUEST. The inquest over the body of George Head, who died Saturday morning from the effects of a blow struck by Officer S. M. Hall, was begun Saturday afternoon at the undertaking rooms of De Moss & Penwell. A large crowd, mostly friends of the dead man, gathered and listened to the testimony.

Six witnesses were examined, the testimony of each being in substance the same as that of the others. From their statements Head had been drinking and was inclined to be boisterous, but he made no resistance to Hall before the latter struck him. Those examined Saturday were: P. F. Rupert, Perry Tomlin, E. J. Mann, H. L. Herring, Mrs. Sarah Montgomery and J. P. Berry. The examination was conducted by Dr. H. B. Hogeboom and Attorneys Otis Hungeate and J. S. Ensminger.

At 9:30 this morning the inquest was resumed with the examination of Dr. R. M. Buckmaster and Dr. C. E. Judd, physicians who made an examination of Head after his death. When questioned as to the cause of the man's death Dr. Buckmaster said:

"I should say that the immediate

M'KINLEY STARTS

President and Party Leave Washington on Time

For a Six Week's Tour of the Country.

LARGE CROWD CHEERS

As the Special Train Pulls Out of the Depot.

Every Detail of the Trip Has Been Perfectly Adjusted.

Washington, April 29.—The train that is to carry President and Mrs. McKinley and their party on their long excursion across the continent and back made its start today precisely on schedule time over the Southern road. Before 10 o'clock many people had congregated about the station and when the president and Mrs. McKinley arrived about 10:20 o'clock the building was thronged and many persons were congregated on the outside.

There was much cheer as the president's immediate party drove up to the station and a general demonstration of affection and regard as the head of the nation and his wife made their way through the crowd to the train. Mrs. McKinley leaned upon the arm of Dr. Rixey and both she and the president smiled in response to the greetings which met them at every step. They were accompanied to the train by numerous friends and by many persons distinguished in the affairs of the nation.

Mrs. McKinley found the drawing room of the private coach which she and the president live to occupy beautifully decorated with roses and other flowers. Seating herself beside a window, facing the crowd, she continued to smile and now to acquaintances until the train moved out. The president took his position on the rear platform of the Olympia, beside Secretary Hitchcock.

At 10:30 o'clock the train started on its 10,000 mile journey. The crowd cheered enthusiastically and waved a good-bye. The demonstration was continued until the train left the environs of Washington and was well out of the city limits.

TALKS TO THE CROWD. Charlottesville, Va., April 29.—The presidential train passed through Charlottesville on schedule time. It stopped here about ten minutes and the president made a short address, which was applauded by the large crowd about the station.

IN PERFECT ORDER. Every Detail of the Trip Arranged With the Utmost Care.

Washington, April 29.—For months past a number of the clerks in the ex-

MEET ON MONDAY

City Council Will Then Meet in Regular Session.

If Contest Is Appealed Must Be Done by Council.

There will be no meeting of the city council until next Monday evening unless a special meeting is called.

If an appeal from Judge Hazen's decision is made it must be by the council and then the city would have to pay the expense of the appeal.

If no appeal is taken then the council must give Mr. Parker a certificate at the next meeting.

There seems to be no inclination on the part of the council to refuse to obey Judge Hazen's order.

Councilman Charles Judd said today: "I shall obey Judge Hazen's order. If Mr. Hughes is wise he will not try to force us to confirm any appointments."

H. S. Nichols, the Fifth ward alder, said: "I have no disposition to disobey Judge Hazen's order. I do not think Mr. Hughes will try to make any appointments."

Councilman J. S. Warner of the Fifth ward said: "I suppose that the only thing to do will be to deny the result according to Judge Hazen's order. It seems to me our duty is plain and I am in favor of doing our duty. I do not believe in the favor of this decision that Mr. Hughes would ask us to confirm any appointments."

The effects of the judgment of the court in the Parker-Hughes mandamus case is still a point of discussion.

In his opinion Judge Hazen said: "The court cannot say that the issuance of the writ in this case would be fruitless or unavailing, for we must assume that the person holding a certificate resulting from a lawful canvass will be permitted under that certificate to qualify and enter upon the duties of the office."

Mr. Judd, who has studied this case carefully said of this case: "Under such a decision it is plainly the duty of the council to refuse to confirm any appointments made by Colonel Hughes. He should make any. The presumption is that he will not make them, but should he do so the council ought not to allow any dissent toward the order of the court by issuing a certificate to Parker and then refusing to recognize him. It is the plain duty of the council to give the certificate to Parker and then refuse to recognize him. It is even full force and effect by Parker, who will have the only legal certificate, and that certificate will be issued to him by the council and the right to perform the duties of the office of mayor. It would be a plain violation of the duty of the council to issue a certificate and then refuse to recognize Parker."

"Then again, the members of the council are the only ones who can appeal from the decision of the council. Hughes has resigned as a councilman and he has no right to appeal. The council has a right to do so. The judgment of the district court is a final decision and it is not against Hughes. Hughes cannot appeal unless ordered to sign the certificate of election.

"It will be strange if the city council appeals a case, in which the council has no interest, and run the risk of paying costs in the present case and in the supreme court. It would seem that a legal canvass should be ordered and if the case is to be contested it is the plain duty of the council to let Hughes contest by quo warranto or other proceedings as he chooses to bring and then let the party with the grievance go to court and fight his own case.

"Canvassing boards never assume that their certificates, though issued under order of the court, are invalid or erroneous, and it is unheard of that they should issue certificates and then appeal from their own decision to get a court to declare it invalid."

SEE THE END IN JULY. G. C. Clemens Discusses Effect of Judge Hazen's Decision.

G. C. Clemens, one of the attorneys for Mr. Parker, said today of future steps in the contest for the office of mayor:

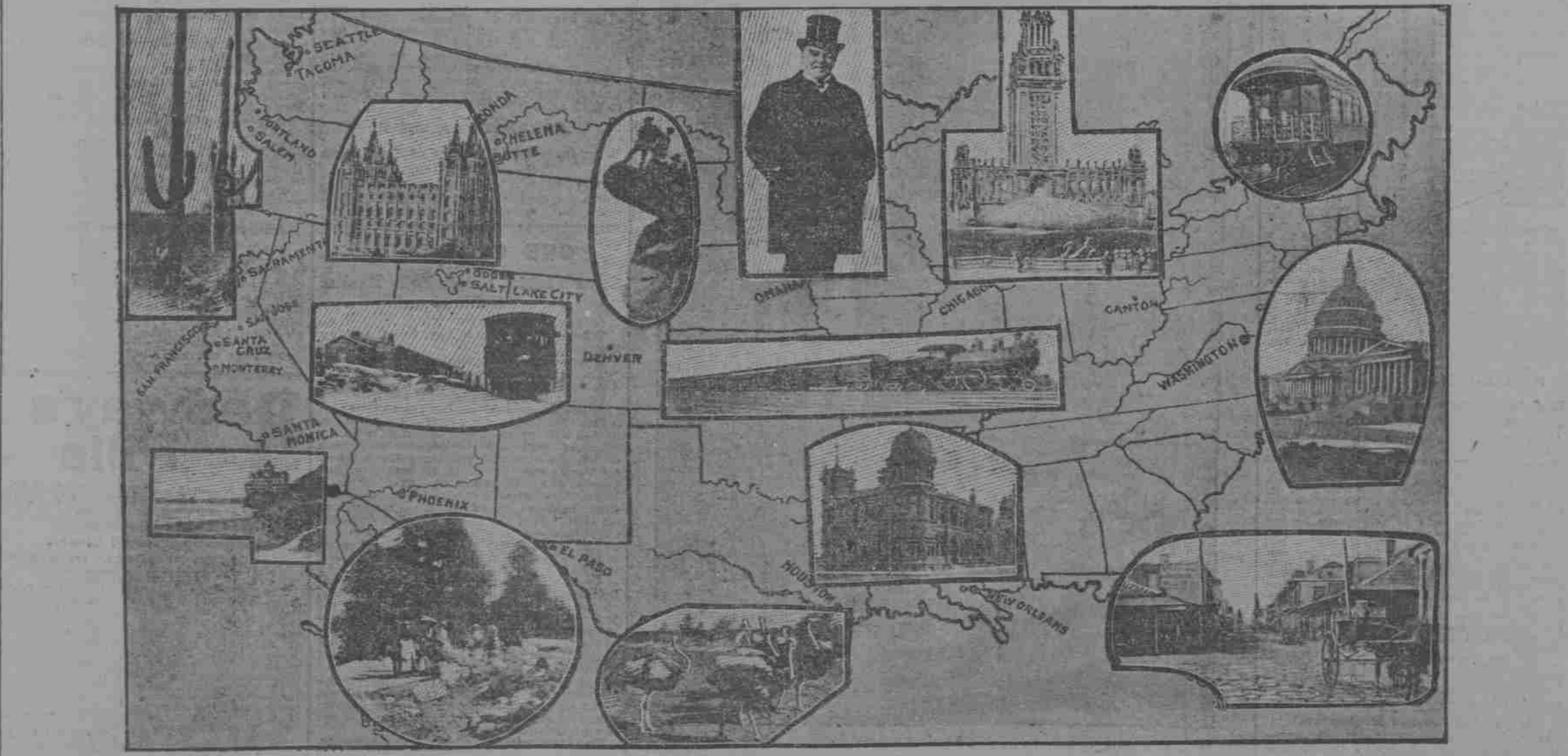
"As to what will be done if Mr. Hughes should make appointments and the council confirm them, I do not wish to say. I have no reason to believe that Mr. Hughes or any councilman will put himself in any such position. It would be as foolish to those gentlemen, most of whom are my friends, to assume for a moment that they will conduct themselves as other than orderly, law-abiding citizens and that they will use legal proceedings and not upon ignoble trickery in what they may do. We no longer need an injunction. After this decision we could speedily undo anything rebellious men might do. But I refuse to believe for a moment that we are dealing with rebellious men.

"Then there is Charles Spencer, the city attorney. I have known him since he was a boy, and no more high-minded and thoroughly honorable man walks the streets. He will be a bitter, cold day when Charles Spencer encourages for a moment any such conduct as the making of appointments would be at this stage of the case."

"If the case goes to the supreme court that court has power to stay our judgment in the meantime. But the court can impose conditions in the Agricultural college case, which was a bitterly partisan case, as this is not, and I had the wrong end from a partisan standpoint. The court required, as condition of a stay, that the case should be heard at an early date and that in the meantime the regents should make no appointments but should attend to only detail business. Yet that was a great state institution. Would the court do less in this case? I think not. We shall probably see the end of it the first week in July."

M'KINLEY ON TOUR WILL PASS THROUGH 23 STATES.

Accompanied by Mrs. McKinley, Members of the Cabinet and Their Wives, the President of the United States Will Make Historic Trip From Capitol to Pacific Coast, Touching the Gulf of Mexico, Pacific Ocean and Great Lakes—Special Will Be Veritable Palace—Will Reach San Francisco in Time to Launch Battleship Ohio, the Object of Trip.



The above picture gives a graphic idea of the vast stretch of territory the President of the United States and his party will cover on their history-making trip to the Pacific coast. The tour will cover twenty-three states and two territories, while the distance travelled will be more than 10,500 miles. The objective point of the trip is San Francisco, California, which the Presidential train will reach on Tuesday, May 14th, at 4:40 P. M. Here President McKinley will superintend the launching of the battleship Ohio. All the members of the Cabinet except Secretaries Root and Gage and Attorney General Briggs, will accompany the party.